

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ALBUQUERQUE PUBLIC SCHOOL BOARD OF EDUCATION,

Respondent-Appellant,

v.

No. CIV-

**CARLA CABRERA, as Parent of
J. M., Student (a minor),**

Petitioner – Appellees

**COMPLAINT FOR JUDICIAL REVIEW
PURSUANT TO SECTION 20 USC §1415**

Introduction

The Albuquerque Public Schools Board of Education (as the governing entity for the Albuquerque Public Schools) by and through undersigned counsel files this complaint seeking judicial review of a special education due process hearing decision resulting from a special education due process proceeding captioned as: *In the matter of Carla Cabrera as parent of J.M., a minor vs. Albuquerque Public Schools DPH. No. 1920-11* brought under the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1400 *et seq.*

Jurisdiction and Parties

1. The Board of Education of Albuquerque Public Schools governs the Albuquerque Public Schools and has the capacity to sue and be sued pursuant to NMSA 1978, §§ 22-1-2(I), 22-5-4(A) and 22-5-4(E). The Board of Education and the Albuquerque Public Schools are referred to herein jointly as the “District.”
2. Cabrera and her minor son J. M. are both residents of Albuquerque, New Mexico and

on information and belief continue to live there, and J. M. continues to attend the Albuquerque Public Schools as an 8th grade student.

3. This Court has jurisdiction over this petition for judicial review and for attorney's fees and costs pursuant to the IDEA, 20 U.S.C. § 1415.

Factual Allegations

4. J.M is a thirteen year old minor male child.
5. J.M. at all time's material herein has attended the Albuquerque Public Schools with an identified exceptionality of specific learning disability, particularly in the area of reading and math. As a result, J. M. has and is scheduled to continue to receive direct services from a special education teacher in those areas.
6. J. M. lives in Albuquerque, New Mexico along with his mother Carla Cabrera, a step-father, and at least two other siblings.
7. J.M. attends one of the District's middle schools, Madison Middle School, and as of the start of the 2020-2021 school year will be in the 8th grade as a transfer request pursuant to a parent request.
8. As a student who meets the eligibility requirements for special education, as a student with a specific learning disability, J.M. requires specialized instruction by a certified special education teacher or an individual operating under a provisional license issued by the New Mexico Public Education Department. Instruction requires the provision of individualized support by a special education teacher in a scientifically research-based instructional program.
9. J.M., as a transfer student, attended Madison Middle School for the 2019-2020 school years as a seventh grade student.

10. The District provided services and specialized instruction to J.M. while in the seventh grade at Madison Middle School. J.M. was first identified as eligible for special education services near the conclusion of the 2018-2019 school years while in attendance at Janet Kahn Elementary School.
11. Reading instruction is provided to J.M. using a multi-sensory, scientifically based reading program. The District also provided supplemental instruction in reading through the iStation program, which provides frequent and focused information on a student's performance and understanding of reading elements. These data points allowed the staff to modify the instruction as needed.
12. J.M. has made, and continues to make, progress and his Individualized Education Plans ("IEPs") contain appropriate measurable goals directed to improve his performance and are designed to provide educational benefit.
13. On November 26, 2019, Ms. Cabrera, through her counsel, filed a special education due process hearing complaint with the New Mexico Public Education Department, alleging ongoing violations of J.M.'s rights as a student with disabilities under the IDEA and denial of a free appropriate public education to J.M. for the statutory review period beginning November 26, 2017.
14. The New Mexico Public Education Department assigned a Due Process Hearing Officer ("DPHO") to conduct a due process hearing on Petitioners' due process complaint. The DPHO held a hearing in Albuquerque on February 3 through February 6, 2020.
15. The DPHO issued a final decision in this case on May 3, 2020. *See* attached Exhibit 1.

16. The District prevailed on some issues which are not the subject of this Complaint. One specific issue in which the DPHO found in favor of Ms. Cabrera is the subject of this appeal and which are specifically associated with the following numbered Findings of Fact and Conclusions of Law.
17. The DPHO's Summary of Evidence is flawed. Ex. 1, pp. 3-13. The Summary does not fully reflect an adequate summary of the evidence. The Summary contains conclusory statements not supported by the evidence and includes erroneous statements of fact.
18. The DPHO erred in the following finding of facts: Findings of Fact Nos. 26 and 27.
19. The DPHO erred in the following conclusions: Conclusions of Law beginning on Page 45 under the section of "Tourette's Syndrome Evaluation" through page 56.
20. The DPHO erred in concluding that the District deprived J.M. of a free appropriate public education during the relevant statutory period by failing to evaluate for Tourette's Syndrome. According to the DPHO, the District was on notice of the suspicion of such a condition, despite the parent's clear indication that she was going to get J.M. tested, and the fact that no educationally trained staff indicated any suspicion of Tourette's Syndrome even after training regarding the possible signs of the syndrome.

Prayer for Relief

- A. A memorandum opinion and order reversing the DPHO's Decision insofar as the DPHO granted Petitioners relief, as requested in the underlying matter;
- B. A declaratory judgment holding that Respondents did not deprive J.G. of a free appropriate public education for any time relevant hereto and in particular the

time period covered by the complaint; An order recognizing and declaring Respondent to be the prevailing party in the due process proceeding and awarding attorney's fees and costs incurred in the administrative proceedings, pursuant to the Individuals with Disabilities Education Act;

C. An award of attorney's fees and costs in this action; and

D. Any such other and further relief as this Court deems just and proper.

Respectfully submitted,

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Certificate of Service

The undersigned hereby certifies that a true and correct copy of the foregoing of Notice of Appeal was swerved via email to the following on the 2nd day of June, 2020.

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